

PARTICIPATORY ACTION RESEARCH IN NATIVE COMMUNITIES: CULTURAL OPPORTUNITIES AND LEGAL IMPLICATIONS

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Abstract/Resume

Participatory action research (PAR) is reviewed as a methodology for promoting the use of Indigenous knowledge in the negotiation and litigation of comprehensive land claims and related issues. The legal value of Indigenous knowledge evidence collected using PAR is considered in terms of its admissibility and attributed weight in court processes. A comprehensive series of recommendations is provided to guide Native communities, PAR practitioners and jurists in designing, implementing and developing PAR projects.

On réexamine les recherches d'action participiale (PAR) comme une méthodologie pour promouvoir l'usage des connaissances indigènes en négociant et en contestant les droits complets à la propriété de terre et les problèmes qui s'y rattachent. On examine en fonction de son admissibilité et de l'importance qu'on y attribue dans les procès des cours de justice, la valeur légale de l'évidence des connaissances indigènes qu'on a rassemblée. On pourvoit aussi une série détaillée de recommandations pour guider les communautés indigènes, les praticiens et les juristes de PAR, en préparant, en réalisant et en produisant les projets PAR.

Introduction

In the summer of 1991, a graduate student undertook a community-based research project in a Vancouver Island Native community and encountered strong opposition to the inclusion of community members who were to be hired as researchers. The project was to research the Band's traditional land use and occupancy patterns to contribute toward educational development, cultural repatriation and future comprehensive land claims. Band consultants and the Band administration questioned the role of community members researching their own oral history because they felt that this process could jeopardize the future position of the Band's land claim. In their view the Band's position was jeopardized if the project involved non-accredited professionals as researchers.

Although the research continued as originally planned, the questions surrounding this debate were never satisfactorily resolved. A subsequent search of the literature has failed to uncover any discussion of the legal consequences for land claim negotiations or litigation when presenting evidence compiled by non-accredited researchers. This paper focuses on this issue by arguing that there is a critical need for involving community members in Native communities as principle researchers. To this end, this paper has four broad objectives:

- to establish the value of Indigenous knowledge within a complete framework of knowledge in Native communities;¹
- to establish the role of participatory action research (PAR) in Native communities;
- to demonstrate that oral records compiled through PAR meet legal evidentiary requirements both on substantive terms and in terms of the methodology or process used to document that information; and
- to recommend appropriate methods for Native communities wishing to conduct their own land use and occupancy research.

The Problem

In many Canadian Native communities, a wealth of Indigenous knowledge, once maintained through an extensive oral tradition, is being rapidly lost forever. This creates a crisis of knowledge on two fronts. On the one front, orally maintained Indigenous knowledge is critical to supporting current land claim negotiations. In a separate arena, Native peoples' reclamation of their culture depends on the preservation of Indigenous knowledge.

The negotiating position of a Native group developing a comprehensive

land claim remains largely dependent on its ability to establish a verifiable record of prior use and occupancy of the land base under claim (Ryan and Robinson, 1990). That information is based on the oral and historic record of Native land use. In many communities, because of cultural upheaval, this oral record is increasingly in a fragile and precarious state. Past experience has shown that the presentation of the oral record in negotiations with government or before a court of law has been interpreted more credibly if all stages of the research process are carried out by an accredited team of anthropologists, historians and lawyers.

However, the wisdom of this approach is now questioned for three reasons. First, an enormous volume of Indigenous knowledge has not yet been recorded. Many elders are nearing the ends of their lives and there are too few professionals to document these oral records. Second, few Native communities have the financial resources to hire legal and anthropological professionals. Third, accredited researchers sometimes take ownership and control of the information from the community. Community ownership and control of traditional knowledge are required to reinforce and strengthen Native Canadian cultural identity. In turn, the loss of cultural identity has contributed to conditions of social alienation, poverty and despair (Elias, 1991).

The Role of Knowledge

Central to a comparison of the western scientific framework and an Indigenous belief system are certain assumptions regarding the concept of knowledge. Knowledge is defined by Webster's New Collegiate Dictionary (1981:633) as "the fact or condition of knowing something with familiarity gained through experience or association." It is based on a particular experience and the connections that are made upon reflection of that experience. The act of gaining knowledge therefore cannot be value free as the understanding of an experience is based on previous experiences which in turn are a reflection of values. This position is supported with respect to the social sciences by Overing:

The inevitable attachment of each and every knowledge (system) to particular moralities, argues against the notion of a value free social science on the grounds that such an idea is naive and leads to an abrogation of responsibility (Overing, 1985:23).

Critical theorists advance the view that a society's knowledge is driven by the dominant power interests of that society (Geuss, 1981). Habermas (Geuss, 1981) contends that scientific knowledge is particularly predis-

posed to control by power interests because the ultimate purpose of scientific research is to predict natural occurrences in order to control those occurrences. A corollary thesis argues that knowledge is the central component of power (Elias, 1991; Hall, 1981; Tandon, 1989; Maguire, 1986; Naylor 1991).

If knowledge is fundamental to understanding, interpreting and establishing values within a society, then control over its production becomes an integral component of cultural survival. Jackson *et al.* (1982:6) acknowledge the strategic link between knowledge production and cultural survival, recognizing that:

Knowledge is fast becoming the single most important basis of power and control. Control over knowledge is, therefore, critical to success of the Native movement.

Furthermore, popular participation in the social production of knowledge enhances democratic participation, particularly when community members assist in defining problems, setting research priorities and establishing the manner in which the research is to be used (Gaventa, 1989).

For research to accurately represent the history of Native people, it must acknowledge and address the political nature of its epistemological underpinnings. For Native communities to gain full participation in non-Native society, research should be more in tune with cultural values. To develop an argument in support of culturally appropriate methodologies it is important to differentiate between Western and Indigenous knowledge.

Western Knowledge Systems

The Western knowledge system is premised on a belief in scientific method as the basis of knowledge. Since spiritualism was abandoned as an explanatory theory during the Renaissance, scientific method has been seen as the way in which new knowledge is formed. Since the 19th century, this view has been carried further to assume that human behaviour has the same predictive nature as the physical environment. A century later, western science continues to be guided by a mechanistic, reductionistic view of the universe which considers all living and non-living phenomena as separate parts. As such, western science is based on rational, analytic reasoning and tends to discount as irrelevant intuitive wisdom, mythology and Indigenous knowledge (Johnson and Ruttan, 1991).

Phenomena are explained in terms of a set of laws which are continually tested over time through the accumulation of more quantifiable data. Phenomena are broken down to their most elementary forms. More recently, scientific method is criticized by many (Johnson and Ruttan, 1991;

Knudtson and Suzuki, 1992; Cruikshank, 1990; Colorado, 1989) as limited in its potential to measure non-physical phenomena such as oral history. These same critics express concern that science, although necessary, is not sufficient to provide all the answers to questions about nature and humanity.

Limitations of the Scientific Model

Kuhn (1970) suggests that the history of science is a cumulative process of knowledge building, interrupted by revolutionary shifts in fundamental beliefs that guide the scientific process. These shifts, which he refers to as paradigm shifts, definitively disprove the “absolute” nature of scientific knowledge.

Kuhn argues that the scientific community is comprised of a group of men, with a common education system, shared beliefs and shared values. He contends that given the uniformity of the scientific community, new ideas cannot be drawn from existing approaches. New ideas rise from a willingness to challenge existing paradigms long enough and with sufficient strength to gain a majority of support for an alternative approach (Kuhn, 1970).

The faith that western science can provide a universal, rational and effective approach to world ills is being shaken. Knudtson and Suzuki (1992) challenge the scientific paradigm based on current day realities. If western science could deliver the promised benefits, then the quality of life should have improved globally in the 1960s and 1970s. Instead, a higher quality of life became available for only a declining portion of the population. Conditions in the industrialized nations illustrate that economic disparities, malnutrition, prejudice, alienation, loneliness, violence, poverty, and drug abuse have increased rather than diminished in unquestionably the greatest era of scientific expansion (Knudtson and Suzuki, 1992).

The empiricist proposition is that truth is amoral and facts are autonomous from values. This understanding of truth is in sharp contrast to the belief systems of other societies where truth is considered social, moral and political in scope (Overing, 1985). Knudtson and Suzuki (1992:64) caution that reducing truth and fact to an empirical state carry dangers when regarding humanity in the natural world:

Many scientists and non-scientists alike realize that they take profound risks if they rely exclusively upon the verifiable “truths” of scientific knowledge when they define human relationships to the natural world.

However, we are not arguing that all knowledge systems or all Indige-

nous epistemologies are of equal worth. We are arguing that the western based knowledge system, and in particular science, has limits in accurately defining human issues. In support of this position, Knudtson and Suzuki (1992) suggest that traditional knowledge and the correlate spiritualism of Native people offer greater hope for the resolution of environmental and social problems than all scientific knowledge combined.

Indigenous Knowledge Systems

Knowledge based upon Native experience, history, and mythology is generally referred to as traditional knowledge. While acknowledging the value and intent of this term, we will refer to this body of knowledge as Indigenous knowledge. This term is preferred because of the static and period-specific connotation of the word traditional. As the system of Native knowledge evolved, it incorporated both European values and technological advances. This adaptation process does not compromise the value of the knowledge base, nor do such adaptations acculturate Native knowledge, limiting its applicability. Critics who denigrate Native rights and knowledge systems point to adaptations such as snowmobiles, modern fishing equipment or life style change as justification for denying that Native people maintain a distinct culture, identity and set of beliefs. Indigenous knowledge can incorporate experience, spirituality and history without precluding change and adaptation to technology, economics and life style.

For the purposes of this paper, Indigenous knowledge will be defined as “knowledge that derives from or is rooted in the traditional way of life of Native people” (Legat, 1990:1). Indigenous knowledge is the culmination of generations of experience and insight passed down through oral tradition. This knowledge was holistic in nature incorporating spiritual, ecological, human and social experiences into one understanding of Native peoples' place in the universe.

Holistic Nature of Indigenous Knowledge

Indigenous knowledge focuses on an interconnectedness to the environment. Whether by design or by necessity, Indigenous knowledge promotes the concept of holism and balance to ensure a continual and comfortable existence in the natural world. Animals, air, water and plants exist in a fragile balance. Animals are social beings, not cut off from humans as part of a natural order separated by human society. Interference in the natural order is condemned (Johnson and Ruttan, 1991:7).

Indigenous knowledge is built on observation, experience and reflection, while its teachings are grounded in the natural world. Native wisdom notes that:

Seeking truth and coming to knowledge necessitates studying the cycles, relationships and connections between things. A law of Native science requires that we look ahead seven generations when making decisions (Colorado, 1989:55).

Indigenous knowledge personifies attempts by Western systems seeking to become more integrated, interconnected and interdisciplinary in their approach. Western systems are recognizing the risks of approaching problems using a segmented and fragmented approach.

Validity of Oral History

Native societies have relied on oral traditions to pass down Indigenous knowledge over countless generations. Often the validity and reliability of this information is subsequently supported by empirical evidence or rigorous ethnographic documentation (Burch, 1988). Yet the question remains, how has knowledge been accurately represented when transferred verbally from one individual to another over successive generations?

The answer to this question may lie in differences between European cultures and North American Native cultures. In European cultures, opinion is highly valued. People in Native societies, in contrast, are careful in making assumptions, and offer information only when it is personally known to the individual. For example, when asked to draw conclusions, Native people will often state "Well I cannot comment on that, I can only tell you what my father told to me" or, "I can only tell you where I saw grandmother gather bark." This propensity for accuracy and truth is supported by substantial anthropological documentation (Cruikshank, 1990; Burch, 1988; Chambers, 1983; Brokensha *et al.*, 1980; Blurton Jones *et al.*, 1976).

Value of Indigenous Knowledge to Native People

The preservation of Indigenous knowledge has tremendous value to Native people because Indigenous knowledge and western science represent two different world views. They differ in their perceptions of social, environmental and physical phenomena. When Natives challenge the western scientific paradigm, these challenges are characteristically met with a retreat by scientists into objectivity, the underpinning of western science and legal thought. In so doing, scientists disclaim any responsibility for the failure of their profession to facilitate the recognition of Indigenous knowledge as a basis for laws affecting Native people (Colorado, 1989).

Chambers (1983) shows that Indigenous knowledge is often of far greater use and value to local communities than that of modernizing development agents. Fals Borda (1988) argues that Indigenous knowledge

must be recovered by oral historians and other researchers and be systematically preserved for local communities to chart a more authentic future. Most importantly, Native people identify Indigenous knowledge as a crucial link to their cultural past, present and future.

Barriers to Integration of Knowledge Systems

Despite the arguments in support of Indigenous knowledge, little integration has occurred between western and Indigenous knowledge. These conditions are the result of a cultural bias by Euro-Canadians and an insensitivity on the part of Euro-Canadians to the nature and value of Indigenous knowledge. Johnson and Ruttan (1991:8-9) advise that the following problems associated with Indigenous knowledge make it difficult to integrate with western knowledge:

1. It is difficult to translate one knowledge system into another. A comprehensive and accurate documentation of local knowledge has not been conducted in most communities. Knowledge passed down through oral tradition is only available in the community in which it originated. Because it is revealed through stories, legends and songs, local knowledge is difficult for non-Natives to understand, interpret or apply in a scientific form.
2. Existing attempts to document Indigenous knowledge often use a scientific framework, and force these concepts into an ill fitting framework. Additionally, many conceptual subtleties are lost in the translation from Native languages to English;
3. Professionals, academics and scientists, believe that given the high degree of social, cultural and economic change in Native communities today, Indigenous knowledge is no longer applicable. However, most researchers and Native people confirm that (where cultural genocide has not occurred), Indigenous knowledge is successfully evolving and adapting to changing technology; and
4. The existing biases of western knowledge have dismissed much of what Indigenous knowledge had to offer, especially when it conflicted with Western beliefs.

Clearly, institutional barriers to the emergence of Indigenous knowledge are in place and have prevented its acceptance in our chronicles of knowledge. In a world dominated by science, it is often difficult to imagine any alternative. How can accuracy be ensured without resorting to rigorous scientific method? What alternatives are there that ensure an accurate representation of the material? PAR is one research methodology that addresses the need for social change while not compromising the impor-

tance of accuracy.

Participatory Action Research (PAR)

The authors of this paper advocate the use of PAR as a key tool for collecting Indigenous knowledge and promoting social change in Native communities. PAR methodology is preferred over others because it integrates especially well with Native culture, it meets criteria regarding validity and reliability, and it offers a pragmatic means of recording oral history before much of it is lost. PAR is an alternative investigation method to scientific research that also provides a means for cultural repatriation.

PAR can be defined as an integrated approach involving the participation of community members to investigate social reality, build local skills and capacity for the purpose of increasing community autonomy through a process of praxis (Hall, 1981; Tandon, 1988). It relies on the experience of the people, it values the culture and it builds human capacity within the community.

Current Approaches to PAR

PAR has been used as a development tool in a wide variety of settings. Best known for its application in Latin America and Africa, PAR has been adopted by communities as a process for local empowerment. Practitioners identify the following as objectives characteristic in any PAR project:

- social investigation – to develop the critical consciousness of people;
- education – to build peoples' capacity; and
- action – to change or eliminate structures of oppression.

Implicit in these objectives is the rejection of the value free position espoused by orthodox research, favouring instead a subjective position in line with community values.

In conducting research with people, PAR seeks to connect community members with actions to better community circumstances. While PAR rarely investigates research questions common to western academic disciplines, it does regard the production of knowledge as central to community autonomy and to action. Additionally, although PAR differs from orthodox research, it utilizes a rigorous and systematic process in identifying research needs. A review of the literature (Hall, 1989; Maguire, 1986; Naylor, 1990; Ryan and Robinson, 1990; Tandon, 1989), indicates that seven main steps are generally undertaken:

- problems are identified by the community; the community investigates the problem and isolates its components;

- adult trainees acquire the tools of research and analysis, in order to identify the social, economic and political structures contributing to the problem;
- alternative actions are identified which offer the potential to resolve the problem;
- evaluation of these alternatives is undertaken;
- a program is designed for implementation of the preferred alternatives; and
- community awareness is raised of the potential to effect change and to foster a subsequent deeper commitment to work towards resolving community problems.

These steps in many ways parallel the steps of scientific methodology and the stages of the rational approach to project planning. The difference between the two is that the research objectives in the PAR process are determined by the community.

The current approach to PAR has been characterized by Hall (1981) as involving the full and active participation of the community in the entire research process. Tandon (1989), building on Hall's work, examined the role of the community in the process as one in which local people:

- have a role in setting the agenda of inquiry;
- participate in data collection and analysis; and
- have control over the use and outcome of the whole process.

When the community controls research projects from beginning to end, while following a rigorous and systematic process of implementation, a more accurate and authentic analysis of social reality is possible. Current approaches to PAR have been used in a wide variety of settings, mostly in developing countries. PAR has most often been used as a community planning tool to understand and develop responses to problems faced by the community.

PAR for Native Communities

Conventional research approaches to Native issues have met with remarkably little success when measured by the ability of that research to substantively strengthen the cultural and economic well-being of the target population (Chambers, 1983, Ryan and Robinson, 1990). Often, orthodox approaches are focused completely upon the "ends" of the research objectives. Little or no concern is given to the manner or means in which the research process can affect the lives of the study population (Fals

Borda, 1989). However, increasing community-based knowledge is recognized as a prerequisite for a culturally based Native movement (Elias, 1991). In the view of many practitioners and theoreticians, the essential aspects of traditional Native culture, such as a unique world view based upon stewardship of the land, is only to be found at the community level (Jackson *et al.*, 1982; Gaventa, 1982; Elias, 1991).

The application of PAR techniques in Native Canadian communities is on the rise. Four reasons explain the popularity of this technique:

- PAR contributes to a balancing of the historical record in a Native voice;
- PAR increases the chance of development effectiveness and longevity;
- PAR contributes to a healing of social ills; and
- PAR methods are consistent with Native values.

Balancing the Historical Record

Native Canadian history has been written almost exclusively by non-Native historians. In order to create a balanced view of Native history, an Aboriginal perspective is required. Cruikshank (1990:346), working with Indigenous northern elders, comments that this can be accomplished only if there is a “commitment of Aboriginal people to record oral accounts from elders which will allow them to document their own past in their own voice using their own oral record.” By creating a new and perhaps more appropriate historical interpretation, PAR is a means for challenging current assumptions and ideas. It is anticipated that by producing and defining their own history, more Native communities may gain the confidence and skills to discover ways to take control of their future.

Increasing Project Effectiveness and Longevity

PAR increases the chance of a development project's effectiveness and longevity (Fals Borda, 1989; Tandon, 1988). Native communities have a long history of unsuccessful development projects (Elias, 1991). While the factors contributing to this record are complex, two issues stand out as worthy of comment. First, the development solution is often an imposed program, lacking the support and ownership by the community. Second, the proposed methods for implementing the development project are often inappropriate or do not fit the culture or circumstances of the community for which they were intended (Chambers, 1983).

The unique characteristics of PAR increase the likelihood that projects will be successfully implemented and remain an active part of the community's development. In particular participation de-mystifies the research

process. Understanding the research process equips community members to be advocates of change. The ongoing research feedback loop may improve the researchers' understanding of the participant's situation. This will strengthen the appropriateness of the data collected and the quality of recommendations. Participation by the community also leads to an identification of appropriate uses for the research. Perhaps most importantly, participation increases the stake the community has in the success of the project. Increased understanding, trust in the data and personal investment of time increases the community's sense of ownership of the project (Willegen *et al.*, 1989).

Healing of Social Ills

PAR contributes to a healing of social pathologies. Colonial policies which denied Native culture and history, have been recognized as prime contributors to the legacy of social pathologies which continue to plague many Native communities (Elias, 1991). PAR contributes to healing these pathologies by:

- enabling Native communities to take control over local concerns;
- valuing oral tradition, Native history and culture; and
- building capacity through process or technical skill transfer.

Government policies toward Indian people in Canada have historically created conditions and perceptions of powerlessness within Native communities. By involving communities in the research process PAR builds analytical and critical skills of community members and in doing so returns control and power to the community. PAR encourages communities to critically incorporate technical knowledge with local practices, allowing them to develop and identify knowledge which they identify as relevant to improving their community (Tandon, 1988). Creating enabling conditions for greater control by Natives of their own communities depends upon the creation of a more equal relationship with non-Native society, requiring in turn the development of a critical consciousness within Native people (Colorado, 1989).

Consistency with Native Values

PAR's techniques are consistent with Native values. Colorado (1989) sets out the characteristics of PAR that demonstrate it as a particularly adept methodology for Native people. In Colorado's view, PAR is collaborative, endogenous, heuristic and experiential and as such it is predisposed

to accepting the idea of an alternative knowledge base and a process oriented, communally-based Indigenous methodology. By stressing participation, PAR provides cross-cultural opportunities for collaboration, cooperation and communication. Finally, PAR is process-oriented, requiring, and therefore building skills in human interaction, interpersonal dynamics, conflict resolution and group development.

While PAR is clearly a relevant approach to research in Native communities, it is not a panacea. One of the main pitfalls of researching Indigenous knowledge is that well intentioned but inappropriate use of oral traditions, transcribed into a European context may lead to the misrepresentation of "far more complex messages than were in the original native narrative" (Cruikshank, 1990:346). Furthermore, the attempt to sift the oral accounts for facts may detract from the value of that account by asserting positivistic standards for assessing truth or distortions.

Additionally, the idea of creating a data bank of oral accounts for future analysis takes the social meaning out of context and can lead to significant distortion of those accounts (Cruikshank, 1990).

In summary, PAR has two main effects. First, PAR redefines the knowledge on which action is based. Second, this research methodology enhances the critical recovery of history. Through the reappropriation of knowledge, people will learn that the scientific foundation of knowledge, through which their own experience is discounted, is not so complete. By re-examining Indigenous knowledge and by appreciating its value, both older and younger generations can turn feelings of dependence to attitudes of self-reliance. Ultimately, the research becomes a resource for analyzing dominant ideas and clarifying strategies of action that can be undertaken.

PAR Projects in Native Canadian Communities

Over the past twenty years, variations of PAR have been carried out as part of land use and occupancy studies and ethnographic research. There are few documented applications of PAR methods in Native Canadian communities, but Ryan and Robinson (1990) speculate that many practitioners have introduced similar techniques without realizing the link to PAR methodology.

The use of PAR methods have focused on two types of projects: those relating to investigation, and those relating to program development. Program development projects often focused on economic development, education, health and social service delivery. Investigation projects have mostly researched oral history, cultural traditions, land use and occupancy patterns, and ecological and environmental management.

Pressures of industrial development of the Canadian North provided the impetus for chronicling Native knowledge beginning with the Canadian Arctic Gas Ltd. studies in 1971-1976 (Johnson and Ruttan, 1991). The most significant event in terms of recognition and legitimization of Native knowledge and needs was the 1977 Berger Inquiry into the effects of pipeline development in the Mackenzie valley (Berger, 1977). Since that time other projects have explored the use of community research. Examples include, the Dene Mapping Project in 1972-1989, the CBC Inuvialuit Oral History project, Brody's (1983) land use mapping project with the Beaver Indians in northeast British Columbia, Freeman's (1976) extensive land use and occupancy study of the Inuit of the Eastern Arctic, and Abele's (1989) study of Northern Native employment and training programs. Feit (1986) has supported community based land use studies with the James Bay Cree on lands affected by hydroelectric projects in northern Quebec.

The intentional application of PAR processes is increasingly being recognized as appropriate to Native community needs. Johnson (1992:3) notes that “ ‘Participatory community’ or ‘action’ types of research have become the accepted approaches to the study of TEK (traditional environmental knowledge).” The Arctic Institute of North America initiated a successful community based language and cultural project with the Gwich’in Dene of Fort McPherson. The Arctic Institute is also currently involved in the development of a traditional Native justice system with the Dene Cultural Institute and the Dogrib Dene in Lac La Marte and Rae Lakes, N.W.T. The Dene Cultural Institute Pilot Project is another example where PAR methods have been used to document the traditional environmental knowledge of the people of Fort Good Hope and Colville Lake (Johnson, 1992).

Critique of PAR

While the inherent value of participatory processes in Native communities is increasingly recognized by Native organizations (Elias, 1991), the use of these processes for the purpose of documenting oral history to substantiate land claims is beginning to raise concerns amongst more traditional anthropologists and lawyers. Most of the concerns are strategic, centering around the belief that in the negotiation or litigation processes, valid evidence may be deemed less reliable when it has been compiled by an interested, non-professional (i.e., no formal academic qualifications) researcher. From the traditional “expert” perspective PAR may be seen to be injurious to subsequent scientific research by exhausting informants, creating political tensions, or introducing the community to historically

distorted facts that can lead to subsequent presentation of distorted information. Concern may also be raised that where PAR has produced inaccurate evidence, it may damage the credibility of subsequent accredited research. Finally, the community researcher may fail to uncover certain information, or be given inaccurate information, because of family or political divisions within their community.

Although none of these criticisms point to structural difficulties in the implementation of PAR, they do rightly identify the need for a carefully planned and monitored research program. An examination of the judicial requirements of Indigenous knowledge is in order. A systematic approach to data collection by Native communities to meet these requirements is also needed.

Legal Considerations

Legal Basis of Native Claims

The critical question to be addressed is the interplay between the rules and principles of evidence law on the one hand, and the evidence that might be available to Native communities from within those communities themselves. Whether the claim is to the land itself or to a natural resource such as fish, it is the historical relationship of the Native community to the land or resource that is ultimately critical. This is so whether the claim is based on the absence of any treaty, on the interpretation of a treaty that preserves certain rights, or on the invalidity of a treaty that exists. Essentially, Native communities have to establish the historical existence of the right claimed and at least address the question of whether or not the right claimed has been extinguished by subsequent treaty, legislation or perhaps non-use. There are technical legal questions of the burden of proof depending on the exact manner in which the claim is put forward in a lawsuit, but no Native individual or community can contemplate making such a claim without having at least some evidence to support it.

Native Culture and Evidence

The dominant legal traditions in Canada are of European origin, deriving from England and to a lesser extent from France and Scotland. The cultures within which those traditions were set at the time of European settlement were, and remain, cultures that value writing and use it to create lasting records of many matters. Obviously Native cultures throughout the world are much more orally focused. Lasting records do exist within those cultures, but they tend to do so as a matter of oral tradition or as the preservation of symbols, the interpretation of which is itself a matter of oral

tradition. From the Native perspective, any successful propounding of a land or resource claim is likely to have to rely heavily on those traditions that are preserved within the culture and passed on from generation to generation.

It is true that historical documents do exist that purport to record Native relationships to land and to resources. Overwhelmingly, such documents were created by government, trading company or explorer sources. Even to the extent that they genuinely seek to record Native perceptions of their own rights and practices, these documents have questionable elements deriving both from general problems of language and interpretation, and from the imposition of legal concepts derived from the dominant White European cultures on to patterns Indigenous to the Native communities. More frequently, of course, such documents may be thought to have been created with an eye to furthering the interests of government or a trading company when such interests were antithetical to those of the Native community, at least as those communities now perceive them. Similar problems can affect more recent documentation generated by anthropologists, ethnologists, historians and other social scientists.

Although Native communities can, of course, rely on such favourable material as might be found in this earlier documentation, only too often it is necessary for the communities to draw on their own oral traditions in order to contradict or reinterpret that part of the historical record they believe is incorrect. However, it is not enough in a lawsuit propounding a Native claim merely to destroy or weaken the evidence that contradicts the claim. The claim itself must be affirmatively quantified from the Native perspective. This means that modern efforts to recover the record the oral traditions of Native communities must have a double dimension: first to show that that which was historically documented is in material error; second to show what the true state of affairs actually was.

In an ideal world, totally bilingual and bicultural Native social scientists might be trained to undertake the process of recovering and recording their own communities' traditions. Currently, there are few such people indeed and a realistic training program is likely to postpone recovery of oral tradition until the next century. This is totally unrealistic in light of dramatic social changes within the Native communities themselves. The current generation of senior elders may well be the last that is realistically capable of providing much of the necessary information both factual and spiritual. Accordingly, more immediate strategies are essential. The most obvious strategy is one keyed to community-based research. This will have both virtues and imperfections. It is necessary to consider how the law of evidence might

respond to both the virtues and more critically to the imperfections of a PAR approach.

Hearsay Evidence: Admissibility and Weight

Both the historical documentation of the dominant cultures and the oral tradition of Native culture are classified as hearsay for the purposes of the law of evidence. The essence of hearsay is that it is evidence of one person's first-hand perceptions, presented through another person who lacks that first-hand knowledge, for the purpose of establishing the truth of the original person's first-hand perceptions. There is an obvious potential vice of unreliability in such circumstances, which compounds as more people are added to the chain between the original person who had the first-hand perceptions and the person who ultimately presents those perceptions to a court. The law is not necessarily oppressed by the mere fact that evidence is potentially unreliable. It is oppressed, however, by the problem of testing for that unreliability. The traditional testing mechanism is oral cross-examination of the witness who is presenting the evidence. This is of very limited utility when the fundamental issue is the accuracy of the perception of a person who is not the witness but whose perceptions have been reported to the actual witness, one or more removed.

From the 18th century onwards, English law set its theoretical face entirely against the reception of hearsay evidence. The rule emerged, to haunt us still today, that hearsay is in principle inadmissible. However, that same law has always had a practical face to offset this theoretical face. In truth a very great deal of undeniable hearsay is and always has been admissible in evidence by way of exception to the general rule. Traditionally it was the fashion to say that all exceptions derived from some compound of necessity and reliability: that it was necessary to receive hearsay otherwise relevant evidence would simply not be available at all, and that much hearsay is created in circumstances that do in fact carry with them some intrinsic guarantee or at least probability of likely reliability. A long list of discrete exceptions developed, each with its own distinctive criteria usually bred of judicial perceptions of what made for reliability and necessity at a particular point in time.

More recently, the Supreme Court of Canada has increasingly recognized that there is an arbitrary quality to such a list of historically fixed exceptions, and that it may be appropriate, either generally or in specific cases, to receive as evidence material that is either on the fringes of an existing exception or that simply does not fit into any existing category. This movement has impacted on Native land claims litigation, and there can now

be little doubt that in principle hearsay evidence, whether in the form of older documents or modern recovery of oral tradition, will be admissible in evidence by way of exception to the general rule. It is worth noting that such evidence has always been admissible at administrative hearings and inquiries, and all that has really happened is that the courts have come into substantial line with the practices of these alternative adjudicative mechanisms.

However, the proposition that evidence is admissible is both the end of one inquiry and the beginning of another. All evidence has to be weighed by the trier of fact to determine what it is worth and what conclusions it will support. The real problem with evidence of oral tradition, not least when collected by community-based research strategies, is with its weight. Despite the superficially oral structure of a trial, the acculturation of White judges seems to be one that sees intrinsic reliability in old documents and intrinsic unreliability in recently recovered statements of oral tradition. The magical quality of writing combined with age are thought to confer a degree of reliability that is not necessarily rational, but has very deep cultural roots. There is a parallel notion that denies or minimizes the intrinsic bias that might otherwise be thought to exist when old documents were created by public servants, but underlines and maximizes the intrinsic bias that is thought to exist when evidence is consciously recovered for purposes that may include the development of a legal claim. In this respect, the traditional classification of discrete hearsay exceptions still has considerable vitality in the courtroom, but as a factor in assessing weight rather than as a matter of admissibility.

Weight, Oral Tradition and the Future

Clearly, if oral tradition recovered by PAR research strategies is to be accorded the weight necessary to allow Native land and resource claims to prosper there are a number of factors that have to be addressed. Negatively, it may be useful to bring out with increasing force the factors which suggest lack of reliability in the historical documents so often relied on to deny success to Native claims. There are strong parallels here with debates that have long raged in such disciplines as history, and indeed the social sciences generally, about the nature of evidence. The intellectual foundations of these debates have only begun to penetrate the legal world relatively recently, and still tend to find their expression within the law school rather than in the practising world of the bar and particularly the bench.

There are, however, more positive principles that might be built in to community-based PAR research strategies and the presentation of its fruits

in the court room in order both to confer reliability and defeat arguments of unreliability, thus enhancing the critical factor of weight. The precise translation of these principles into practice is the subject of the next section.

First, there is a need to ensure that judges understand Native culture and in particular the paramountcy within it of oral tradition and preservation of symbols as the preferred mechanism for retaining significant information within the culture. Second, when evidence is presented by Native communities, judges need to understand that court room traditions of adversarial examination and cross-examination are not congenial to Native culture and often produce an intrinsic distortion of Native realities. Third, the problems of language and concept in translation need to be addressed. Fourth, the training of those who animate community-based research on the front line must be intellectually sound and be capable of explanation to a judge. Fifth, to the extent possible, comprehensive records should be kept by the participants (trainees and practitioners) in the PAR process. Sixth, retrieved tradition should not be merely conclusionary but should contain precise factual detail to the extent possible so that the factual basis for the conclusion is available for scrutiny. Seventh, the intellectual validity of community-based research itself needs to be understood by all those involved in it so that the judiciary will not be able to denigrate its fruits by pointing both to lack of intellectual rigor and to lack of understanding of intellectual rigor by practitioners.

Recommendations

Having recognized the problem of preserving a rapidly disappearing body of Indigenous knowledge, and stating our belief in the value of PAR methodology in Native issues litigation, we offer practical advice for establishing a national PAR standard and creating cultural regional PAR institutions to seize the current opportunity to undertake the work. Elders across Canada are interested and willing to pass on their Indigenous knowledge, First Nations and regional tribal councils still have access to federal funds for the preparation of comprehensive and specific claims, and many Native communities are seeking an Indigenous knowledge base for the development of economic self-reliance, self-government and culturally sanctioned language and justice programs. Time is of the essence, however, as the recession cuts into government budgets, and national policy priorities become even more oriented on mainstream, urban economic issues. All of the recommendations proposed here are capable of speedy implementation in many existing First Nation, academic and consulting organizations. The main stumbling block to implementation of the PAR approach to

preserving and mobilizing Indigenous knowledge is lack of awareness of its existence, utility, and judicial applicability.

PAR Methods

PAR methodology is increasingly standardized in the global literature. Ryan and Robinson (1990; 1992) have demonstrated in theory and action how it has been successfully implemented in the Dene communities of Fort McPherson and Lac La Martre, N.W.T. Prior to beginning PAR with any First Nation community we advocate adoption of the following principles in a project agreement signed by all of the participants:

- 4.1 a commitment to the community controlling the process, from setting the research agenda, through PAR consultant trainee selection and project development, to budgeting and annual project review;
- 4.2 a commitment to community ownership and control of all research products and their use. This means that copyright is retained by the community;
- 4.3 a strong and continuing reliance on the capability of community adults as trainee researchers, teachers, writers and project advisors;
- 4.4 a shared commitment to advocacy on behalf of the community on issues of its choosing;
- 4.5 a commitment to a group dynamic and consensual process of decision-making and a feminist interrelational approach;
- 4.6 a commitment to the PAR consultant working him/herself out of a job within a specified time (Ryan and Robinson, 1990:59); and
- 4.7 a commitment to regional adoption of the above principles if a multi-community project is contemplated so that a regional PAR standard is achieved.

The uniform regional PAR standard is especially important when litigation may be contemplated (e.g., in respect to a disputed comprehensive land claim). As noted earlier, the traditional exceptions to the hearsay rule are derived from necessity and reliability. The key to court room success, therefore, is replicability of PAR methodology, in terms of production of facts and conclusions, and in the context of the intellectual rigor of training both practitioners and community trainees. PAR data must be seen to be reliable and its practice must be intellectually sound and capable of explanation to and comprehension by a judge.

The PAR methodology is a team approach that combines a well qualified practitioner (ideally an expert with a Ph.D in Anthropology, Community Development/Planning or Adult Education), community trainees, and a community advisory committee. A technical advisory committee may

also be required if expertise (e.g., of a legal, medical or western scientific nature) is needed beyond the capacity of the community to supply such information. The PAR practitioner will write grant applications to foundations and government departments, conceptualize project methodology, participate in the trainee selection process with the community advisory committee, coordinate and deliver adult training initiatives and generally steward the research process. In most first generation PAR projects the practitioner will also play a major role in draft and final report writing. He/she will also act as an expert witness on methodology and PAR process in court or tribunal proceedings, but will generally not present the facts of the case. Both community trainees and the PAR practitioner may be involved in the presentation of conclusions. Care must be taken so that the factual basis for all conclusions is available for scrutiny, and is perceived to be both consistent and reliable.

Large PAR projects may wish to expand the practitioner's role to include an administrative and/or research assistant who also brings formal university training to the day-to-day process. While ideally the entire PAR team will reside in the community for the duration of the project (allowing for occasional work and holiday leaves), the inclusion of an assistant will enable a more flexible work schedule, and permit more frequent trips out to secure alternate funding, meet with existing project sponsors and undertake literature reviews and report writing tasks.

One of the realities of PAR work settings is that they become community gathering spots, and the PAR practitioner inevitably becomes a community resource for advice, entertainment, quiet socializing and even baby-sitting. Joan Ryan, while in residence in both Fort McPherson and Lac La Martre, had to pull the curtains and lock the door of the PAR project office to undertake occasional writing tasks in much needed solitude! In Lac La Martre, on the Dene Justice Pilot Project, Dr. Ryan's house was also the project office, and social interruptions vied with work tasks on a continual basis (personal communication, Joan Ryan, 1992). Consequently, we recommend that future PAR projects house the practitioner(s) separately from the project office.

Every PAR team will include community adults who have been selected by the community advisory committee to train as staff for the project. Ideal trainees will have literacy and fluency in English and their Native language, have near or full completion of high school, and be able to commit full time to the project. In choosing the adult trainees, the PAR practitioner and the community advisory committee should consider selecting from a stratified sample of community adults to provide gender and age balance and to bring

a diverse life experience base to the project. The community advisory committee must also carefully select trainees who do not have substance abuse problems, and who clearly commit to the completion of the project.

The work of the PAR team cannot take place without the Indigenous knowledge experts and in most communities these people will be elders. Some communities may also have a younger generation of traditional knowledge experts, for instance grandchildren raised and socialized by traditional grandparents. Most PAR projects will form an elders' council to advise on the work plan and to provide introductions to the key Indigenous knowledge experts for different topics. Care should be taken to establish the learning context in which each elder acquired their information, to create a positive and relaxing interview context, to determine an individual's reputation for accuracy (and to carefully and tactfully distinguish between accuracy and honesty), and to understand each individual's attitude to the work (Burch, 1988). For instance, does he/she have a vested interest in certain research outcomes and conclusions? Is he/she aware of personal bias on contentious issues? As we have seen, the Indigenous knowledge data must withstand tests of bias, reliability and consistency to impress the court or tribunal and to earn an appropriate weighting in the judicial process. Wherever possible Indigenous knowledge facts should be presented by the traditional experts; in some cases it will also be appropriate for them to present conclusions. When elders present evidence care must be taken to advise judges that court room traditions of adversarial cross-examinations are not broadly shared in First Nation communities, and may well distort the content and presentation of Indigenous knowledge facts and conclusions.

The success in court or tribunal of the above described PAR process will depend on the perceived validity of the methodology, the level of factual detail, and the precision with which the facts and the conclusions are connected. It will also depend to some degree on the level of awareness that a judge or presiding officer has of Native culture. As one strategy to increase this awareness, PAR projects should invite judges and tribunal presiding officers to the community and there demonstrate the strength of oral tradition and the cultural connection to the land and water. Where practical, communities should develop strategies to invite decision-makers to participate in feasts, cultural ceremonies, hunting and fishing trips, and elders' teas. During these occasions elders and staff trainees should use the opportunity to explain the difference between customary justice and the inherent conflicts with adversarial process.

A further aid to the judge's (or presiding officer's) perception of the PAR

process is the rigor applied to verifying the facts. Data collected from each Indigenous knowledge expert (be they elder or younger) must not only be tested for community consistency and reliability, but also should be checked for regional or tribal cultural fit. This can be accomplished by taking preliminary results to adjacent communities and asking their local experts to comment on their perception of the information. Does it fit with community experience? Is it typical of their neighbours' practices? Does it vary for predictable reasons? Or is it simply inconsistent with the expected or experienced cultural norms? If it is, why is this so? It will also be important to consider involving Indigenous knowledge experts from other communities in presenting the data and in speaking on behalf of the conclusions which are drawn from them.

PAR Institutions

Just as the courts and tribunals have evolved as the primary institutions for trying fact and passing judgement on Native land and resource claims, so must PAR practitioners work to create their own institutions. These should enable PAR methodology to be taught, community trainees to become PAR practitioners, and permanent staff to reside in communities to achieve locally determined research ends. To date PAR institutions in Canada have evolved from language, cultural and justice research projects (Ryan and Robinson, 1990), but they have demonstrated acute vulnerability to single source government funding, and the desire of governments to assert control whenever possible. Because of this it is strongly recommended that PAR institutions be locally owned and controlled, utilizing land claims funding, local investment and small business model consulting contracts in addition to government and foundation grants. In this respect regional tribal councils, perhaps linked through joint ventures with PAR practitioners in universities, colleges, or research institutes are well placed to catalyze PAR projects. When PAR projects may contribute to litigation processes, careful consideration must be given to including legal counsel in the PAR team. It will help to involve counsel early so that litigation planning and PAR methodology go hand-in-hand.

Conclusions

PAR is a methodology for the present and future in Native communities across Canada. It has strong and legitimate academic roots, is verifiable and replicable, and deserves an increasingly high profile in comprehensive land claims litigation where Indigenous knowledge on land use and occupancy and cultural practices is tendered as evidence. The authors predict that increasingly legal institutions will recognize PAR testimony as an

important exception to the hearsay rule, and will accord it the weight it deserves as Indigenous knowledge evidence. Key to greater acceptance of PAR methodology will be its systematic and rigorous implementation and development by small teams of community adult trainees, PAR practitioners and legal counsel. As more and more Native communities, academics, and jurists see its efficacy and share in its potential for community inspiration and Indigenous knowledge renewal, PAR will become the methodology of choice for asserting community voice in both dispute resolution and community development.

Note

1. It is acknowledged that legal institutions have a history of valuing western knowledge above other knowledge systems.

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